

Calendar No. 737

107TH CONGRESS
2^D SESSION**S. 606****[Report No. 107-320]**

To provide additional authority to the Office of Ombudsman of the
Environmental Protection Agency.

IN THE SENATE OF THE UNITED STATES

MARCH 23, 2001

Mr. CRAPO (for himself, Mr. ALLARD, Mr. CRAIG, Mr. SPECTER, Mr. CAMP-
BELL, Mr. SANTORUM, and Mr. GRASSLEY) introduced the following bill;
which was read twice and referred to the Committee on Environment and
Public Works

OCTOBER 17, 2002

Reported by Mr. JEFFORDS, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italie*]**A BILL**

To provide additional authority to the Office of Ombudsman
of the Environmental Protection Agency.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Ombudsman Reauthor-
5 ization Act of 2001”.

1 **SEC. 2. OFFICE OF OMBUDSMAN.**

2 The Solid Waste Disposal Act (42 U.S.C. 6901 et
3 seq.) is amended by striking section 2008 (42 U.S.C.
4 6917) and inserting the following:

5 **“SEC. 2008. OFFICE OF OMBUDSMAN.**

6 **“(a) DEFINITIONS.—**In this section:

7 **“(1) ASSISTANT ADMINISTRATOR.—**The term
8 **‘Assistant Administrator’** means the Assistant Ad-
9 ministrator for Solid Waste and Emergency Re-
10 sponse of the Environmental Protection Agency.

11 **“(2) OFFICE.—**The term **‘Office’** means the Of-
12 fice of the Assistant Administrator for Solid Waste
13 and Emergency Response of the Environmental Pro-
14 tection Agency.

15 **“(3) OMBUDSMAN.—**The term **‘Ombudsman’**
16 means the director of the Office of Ombudsman es-
17 tablished under subsection (b).

18 **“(b) ESTABLISHMENT.—**

19 **“(1) IN GENERAL.—**The Administrator shall es-
20 tablish within the Office an Office of Ombudsman,
21 to be directed by an Ombudsman.

22 **“(2) OVERSIGHT.—**The Ombudsman shall re-
23 port directly to the Administrator.

24 **“(c) DUTIES.—**The Ombudsman shall—

25 **“(1) receive, and render assistance concerning,**
26 **any complaint, grievance, or request for information**

1 submitted by any person relating to any program or
2 requirement under this Act; and

3 “(2)(A) identify areas in which citizens have,
4 and assist citizens in resolving, problems with the
5 Office;

6 “(B) propose changes in the administrative
7 practices of the Environmental Protection Agency to
8 eliminate or, to the maximum extent practicable,
9 mitigate those problems; and

10 “(C) conduct investigations, make findings of
11 fact, and make nonbinding recommendations con-
12 cerning those problems.

13 “(d) POWERS AND RESPONSIBILITIES.—In carrying
14 out this section, the Ombudsman—

15 “(1) may, on receipt of a complaint or at the
16 discretion of the Ombudsman, investigate any action
17 of the Assistant Administrator without regard to the
18 finality of the action;

19 “(2) may, under the authority of this section or
20 section 104(e) of the Comprehensive Environmental
21 Response, Compensation, and Liability Act of 1980
22 (42 U.S.C. 9604(e)), examine any record or docu-
23 ment of, and enter and inspect without notice any
24 property under the administrative jurisdiction of, the
25 Environmental Protection Agency;

1 ~~“(3) in a case in which the Ombudsman experi-~~
 2 ~~ences difficulty in gathering information pertaining~~
 3 ~~to an investigation conducted by the Ombudsman,~~
 4 ~~may request the Inspector General of the Environ-~~
 5 ~~mental Protection Agency to subpoena any person to~~
 6 ~~appear to give sworn testimony concerning, or to~~
 7 ~~produce documentary or other evidence determined~~
 8 ~~by the Ombudsman to be reasonably material to, the~~
 9 ~~investigation;~~

10 ~~“(4) may carry out and participate in, and co-~~
 11 ~~operate with any person or agency involved in, any~~
 12 ~~conference, inquiry on the record, public hearing on~~
 13 ~~the record, meeting, or study that, as determined by~~
 14 ~~the Ombudsman—~~

15 ~~“(A) is reasonably material to an inves-~~
 16 ~~tigation conducted by the Ombudsman; or~~

17 ~~“(B) may lead to an improvement in the~~
 18 ~~performance of the functions of the Office;~~

19 ~~“(5) shall maintain as confidential and privi-~~
 20 ~~leged any and all communications concerning any~~
 21 ~~matter pending, and the identities of any parties or~~
 22 ~~witnesses appearing, before the Ombudsman; and~~

23 ~~“(6) shall administer a budget for the Office of~~
 24 ~~Ombudsman.~~

25 ~~“(c) ADMINISTRATION.—~~

1 “(1) IN GENERAL.—The Ombudsman may—

2 “(A) appoint an Associate Ombudsman for
3 each region of the Environmental Protection
4 Agency; and

5 “(B) evaluate and carry out personnel ac-
6 tions (including hiring and dismissal) with re-
7 spect to any employee of the Office of Ombuds-
8 man.

9 “(2) CONTACT INFORMATION.—The Ombuds-
10 man shall maintain, in each region of the Environ-
11 mental Protection Agency, a telephone number, fac-
12 simile number, electronic mail address, and post of-
13 fice address for the Ombudsman that are different
14 from the numbers and addresses of the regional of-
15 fice of the Environmental Protection Agency located
16 in that region.

17 “(3) COOPERATION.—All Federal agencies
18 shall—

19 “(A) assist the Ombudsman in carrying
20 out functions of the Ombudsman under this
21 section; and

22 “(B) promptly make available, in such for-
23 mat as may be determined by the Ombudsman,
24 all requested information concerning—

1 “(i) past or present agency waste
2 management practices; and

3 “(ii) past or present hazardous waste
4 facilities owned, leased, or operated by the
5 agency.

6 “(4) REPORTS.—The Ombudsman shall, at
7 least annually, publish in the Federal Register and
8 submit to the Committee on Environment and Pub-
9 lic Works of the Senate, the Committee on Energy
10 and Commerce of the House of Representatives, the
11 President, and, at the discretion of the Ombudsman,
12 any other governmental agency, a report on the sta-
13 tus of health and environmental concerns addressed
14 in complaints and cases brought before the Ombuds-
15 man in the period of time covered by the report.

16 “(f) PENALTIES.—Any person that willfully—

17 “(1) obstructs or hinders the proper and lawful
18 exercise of the powers of the Ombudsman; or

19 “(2) misleads or attempts to mislead the Om-
20 budsman in the course of an investigation;

21 shall be subject, at a minimum, to penalties under sections
22 1001 and 1505 of title 18, United States Code.

23 “(g) APPLICABILITY.—

24 “(1) IN GENERAL.—This section—

1 “(A) shall not limit any remedy or right of
2 appeal; and

3 “(B) may be carried out notwithstanding
4 any provision of law to the contrary that pro-
5 vides that an agency action is final, not review-
6 able, or not subject to appeal.

7 ~~“(2) EFFECT ON PROCEDURES FOR GRIEV-~~
8 ~~ANCES, APPEALS, OR ADMINISTRATIVE MATTERS.—~~
9 The establishment of the Office of Ombudsman shall
10 not affect any procedure concerning grievances, ap-
11 peals, or administrative matters under this Act or
12 any other law (including regulations).

13 ~~“(h) AUTHORIZATION OF APPROPRIATIONS.—~~

14 ~~“(1) IN GENERAL.—~~There are authorized to be
15 appropriated to carry out this section—

16 ~~“(A) \$2,000,000 for each of fiscal years~~
17 ~~2002 and 2003;~~

18 ~~“(B) \$3,000,000 for each of fiscal years~~
19 ~~2004 through 2006; and~~

20 ~~“(C) \$4,000,000 for each of fiscal years~~
21 ~~2007 through 2010.~~

22 ~~“(2) SEPARATE LINE ITEM.—~~In submitting the
23 annual budget for the Federal Government to Con-
24 gress, the President shall include a separate line
25 item for the funding for the Office of Ombudsman.

1 “(i) ~~TERMINATION.~~—The Office of Ombudsman shall
 2 cease to exist on the date that is 10 years after the date
 3 of enactment of the Ombudsman Reauthorization Act of
 4 2001.”.

5 **SECTION 1. SHORT TITLE.**

6 *This Act may be cited as the “Ombudsman Reauthor-*
 7 *ization Act of 2002”.*

8 **SEC. 2. OFFICE OF OMBUDSMAN.**

9 *Section 2008 of the Solid Waste Disposal Act (42*
 10 *U.S.C. 6917) is amended to read as follows:*

11 **“SEC. 2008. OFFICE OF OMBUDSMAN.**

12 “(a) *DEFINITIONS.*—*In this section:*

13 “(1) *AGENCY.*—*The term ‘Agency’ means the En-*
 14 *vironmental Protection Agency.*

15 “(2) *DEPUTY OMBUDSMAN.*—*The term ‘Deputy*
 16 *Ombudsman’ means any individual appointed by the*
 17 *Ombudsman under subsection (e)(1)(A)(i).*

18 “(3) *OFFICE.*—*The term ‘Office’ means the Office*
 19 *of the Ombudsman established by subsection (b)(1).*

20 “(4) *OMBUDSMAN.*—*The term ‘Ombudsman’*
 21 *means the director of the Office.*

22 “(b) *ESTABLISHMENT.*—

23 “(1) *IN GENERAL.*—*There is established within*
 24 *the Agency an office to be known as the ‘Office of the*
 25 *Ombudsman’.*

1 “(2) *OVERSIGHT.*—

2 “(A) *IN GENERAL.*—*The Office shall be an*
 3 *independent office within the Agency.*

4 “(B) *STRUCTURE.*—*To the maximum extent*
 5 *practicable, the structure of the Office shall con-*
 6 *form to relevant professional guidelines, stand-*
 7 *ards, and practices.*

8 “(3) *HEAD OF OFFICE.*—

9 “(A) *OMBUDSMAN.*—*The Office shall be*
 10 *headed by an Ombudsman, who shall—*

11 “(i) *be appointed by the President by*
 12 *and with the advice and consent of the Sen-*
 13 *ate; and*

14 “(ii) *report directly to the Adminis-*
 15 *trator.*

16 “(B) *QUALIFICATIONS FOR AND RESTRIC-*
 17 *TIONS ON EMPLOYMENT.*—*A person appointed as*
 18 *Ombudsman—*

19 “(i) *shall have experience as an om-*
 20 *budsman in a Federal, State, or local gov-*
 21 *ernment entity; and*

22 “(ii) *shall not have been an employee*
 23 *of the Agency at any time during the 1-year*
 24 *period before the date of appointment.*

25 “(C) *TERM.*—*The Ombudsman—*

1 “(i) shall serve for a term of 5 years;

2 and

3 “(ii) may be reappointed for not more
4 than 1 additional term.

5 “(D) REMOVAL.—

6 “(i) IN GENERAL.—The President may
7 remove or suspend the Ombudsman from of-
8 fice only for neglect of duty or malfeasance
9 in office.

10 “(ii) COMMUNICATION TO CONGRESS.—
11 If the President removes or suspends the
12 Ombudsman, the President shall commu-
13 nicate the reasons for the removal or sus-
14 pension to Congress.

15 “(c) DUTIES.—The Ombudsman shall—

16 “(1) receive, and render assistance concerning,
17 any complaint, grievance, or request for information
18 submitted by any person relating to any program or
19 requirement under—

20 “(A) this Act;

21 “(B) the Comprehensive Environmental Re-
22 sponse, Compensation, and Liability Act of 1980
23 (42 U.S.C. 9601 et seq.); or

1 “(C) any other program administered by
2 the Office of Solid Waste and Emergency Re-
3 sponse of the Agency; and

4 “(2) conduct investigations, make findings of
5 fact, and make nonbinding recommendations to the
6 Administrator concerning the programs and require-
7 ments described in paragraph (1).

8 “(d) *POWERS AND RESPONSIBILITIES.*—In carrying
9 out this section, the Ombudsman—

10 “(1) may investigate any action of the Agency
11 without regard to the finality of the action;

12 “(2) may select appropriate matters for action
13 by the Office;

14 “(3) may—

15 “(A) prescribe the methods by which com-
16 plaints shall be made to, and received and ad-
17 dressed by, the Office;

18 “(B) determine the scope and manner of in-
19 vestigations made by the Office; and

20 “(C) determine the form, frequency, and
21 distribution of conclusions and recommendations
22 of the Office;

23 “(4) may request the Administrator to provide
24 the Ombudsman notification, within a specified pe-

1 *riod of time, of any action taken on a recommenda-*
2 *tion of the Ombudsman;*

3 *“(5) may request, and shall be granted by any*
4 *Federal agency or department, assistance and infor-*
5 *mation that the Ombudsman determines to be nec-*
6 *essary to carry out this section;*

7 *“(6) may examine any record of, and enter and*
8 *inspect without notice any property under the admin-*
9 *istrative jurisdiction of—*

10 *“(A) the Agency; or*

11 *“(B) any other Federal agency or depart-*
12 *ment involved in a matter under the administra-*
13 *tive jurisdiction of the Office of Solid Waste and*
14 *Emergency Response of the Agency;*

15 *“(7) may—*

16 *“(A) issue a subpoena to compel any person*
17 *to appear to give sworn testimony concerning, or*
18 *to produce documentary or other evidence deter-*
19 *mined by the Ombudsman to be reasonable in*
20 *scope and relevant to, an investigation by the Of-*
21 *fice; and*

22 *“(B) seek enforcement of a subpoena issued*
23 *under subparagraph (A) in a court of competent*
24 *jurisdiction;*

1 “(8) may carry out and participate in, and co-
 2 operate with any person or agency involved in, any
 3 conference, inquiry on the record, public hearing on
 4 the record, meeting, or study that, as determined by
 5 the Ombudsman—

6 “(A) is material to an investigation con-
 7 ducted by the Ombudsman; or

8 “(B) may lead to an improvement in the
 9 performance of the functions of the Agency;

10 “(9) may administer oaths and hold hearings in
 11 connection with any matter under investigation by
 12 the Office;

13 “(10) may engage in alternative dispute resolu-
 14 tion, mediation, or any other informal process that
 15 the Ombudsman determines to be appropriate to
 16 carry out this section;

17 “(11) may communicate with any person, in-
 18 cluding Members of Congress, the press, and any per-
 19 son that submits a complaint, grievance, or request
 20 for information under subsection (c)(1); and

21 “(12) shall administer a budget for the Office.

22 “(e) ADMINISTRATION.—

23 “(1) IN GENERAL.—The Ombudsman shall—

24 “(A)(i) appoint a Deputy Ombudsman for
 25 each region of the Agency; and

1 “(ii) hire such other assistants and employ-
 2 ees as the Ombudsman determines to be nec-
 3 essary to carry out this section; and

4 “(B) supervise, evaluate, and carry out per-
 5 sonnel actions (including hiring and dismissal)
 6 with respect to any employee of the Office.

7 “(2) *DELEGATION OF AUTHORITY.*—The Om-
 8 budsman may delegate to other employees of the Office
 9 any responsibility of the Ombudsman under this sec-
 10 tion except—

11 “(A) the power to delegate responsibility;

12 “(B) the power to issue subpoenas; and

13 “(C) the responsibility to make rec-
 14 ommendations to the Administrator.

15 “(3) *CONTACT INFORMATION.*—The Ombudsman
 16 shall maintain, in each region of the Agency, a tele-
 17 phone number, facsimile number, electronic mail ad-
 18 dress, and post office address for the Ombudsman that
 19 are different from the numbers and addresses of the
 20 regional office of the Agency located in that region.

21 “(4) *REPORTS.*—The Ombudsman—

22 “(A) shall, at least annually, publish in the
 23 *Federal Register* and submit to the Adminis-
 24 trator, the President, the Committee on Environ-
 25 ment and Public Works of the Senate, and the

1 *Committee on Energy and Commerce of the*
 2 *House of Representatives a report on the status*
 3 *of health and environmental concerns addressed*
 4 *in complaints and cases brought before the Om-*
 5 *budsman in the period of time covered by the re-*
 6 *port;*

7 *“(B) may issue reports, conclusions, or rec-*
 8 *ommendations concerning any other matter*
 9 *under investigation by the Office;*

10 *“(C) shall solicit comments from the Agency*
 11 *concerning any matter under investigation by*
 12 *the Office; and*

13 *“(D) shall include any comments received*
 14 *by the Office in written reports, conclusions, and*
 15 *recommendations issued by the Office under this*
 16 *section.*

17 “(f) *PENALTIES.—An investigation conducted by the*
 18 *Ombudsman under this section constitutes—*

19 *“(1) a matter under section 1001 of title 18,*
 20 *United States Code; and*

21 *“(2) a proceeding under section 1505 of title 18,*
 22 *United States Code.*

23 “(g) *EMPLOYEE PROTECTION.—*

24 *“(1) IN GENERAL.—No employer may discharge*
 25 *any employee, or otherwise discriminate against any*

1 *employee with respect to compensation, terms, condi-*
 2 *tions, or privileges of employment of the employee, be-*
 3 *cause the employee (or any person acting at the re-*
 4 *quest of the employee) complied with any provision of*
 5 *this section.*

6 “(2) COMPLAINT.—*Any employee that, in the*
 7 *opinion of the employee, is discharged or otherwise*
 8 *discriminated against by any person in violation of*
 9 *paragraph (1) may, not later than 180 days after the*
 10 *date on which the violation occurs, file a complaint*
 11 *in accordance with section 211 of the Energy Reorga-*
 12 *nization Act of 1974 (42 U.S.C. 5851).*

13 “(h) APPLICABILITY.—

14 “(1) IN GENERAL.—*This section—*

15 “(A) *does not limit any remedy or right of*
 16 *appeal; and*

17 “(B) *may be carried out notwithstanding*
 18 *any provision of law to the contrary that pro-*
 19 *vides that an agency action is final, not review-*
 20 *able, or not subject to appeal.*

21 “(2) EFFECT ON PROCEDURES FOR GRIEVANCES,
 22 *APPEALS, OR ADMINISTRATIVE MATTERS.—The estab-*
 23 *lishment of the Office does not affect any procedure*
 24 *concerning grievances, appeals, or administrative*

1 *matters under this Act or any other law (including*
2 *regulations).*

3 “(i) *AUTHORIZATION OF APPROPRIATIONS.—*

4 “(1) *IN GENERAL.—There are authorized to be*
5 *appropriated to carry out this section—*

6 “(A) *\$3,000,000 for each of fiscal years*
7 *2003 and 2004;*

8 “(B) *\$4,000,000 for each of fiscal years*
9 *2005 through 2008; and*

10 “(C) *\$5,000,000 for each of fiscal years*
11 *2009 through 2012.*

12 “(2) *SEPARATE LINE ITEM.—In submitting the*
13 *annual budget for the Federal Government to Con-*
14 *gress, the President shall include a separate line item*
15 *for the funding for the Office.”.*

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